

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 528, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2 "SECTION 1. IC 6-3.1-30.5 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 UPON PASSAGE]:
- 5 **Chapter 30.5. School Scholarship Tax Credit**
- 6 **Sec. 1. As used in this chapter, "credit" refers to a credit**
- 7 **granted under this chapter.**
- 8 **Sec. 2. As used in this chapter, "pass through entity" means:**
- 9 **(1) a corporation that is exempt from the adjusted gross**
- 10 **income tax under IC 6-3-2-2.8(2);**
- 11 **(2) a partnership;**
- 12 **(3) a trust;**
- 13 **(4) a limited liability company; or**
- 14 **(5) a limited liability partnership.**
- 15 **Sec. 3. As used in this chapter, "scholarship granting**
- 16 **organization" refers to an organization that:**
- 17 **(1) is exempt from federal income taxation under Section**
- 18 **501(c)(3) of the Internal Revenue Code; and**
- 19 **(2) conducts a school scholarship program.**
- 20 **Sec. 4. As used in this chapter, "school scholarship program"**
- 21 **refers to a scholarship program certified by the department under**

1 **IC 20-51.**

2 **Sec. 5. As used in this chapter, "state tax liability" means a**
3 **taxpayer's total tax liability that is incurred under:**

4 **(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);**

5 **(2) IC 6-5.5 (the financial institutions tax); and**

6 **(3) IC 27-1-18-2 (the insurance premiums tax);**

7 **as computed after the application of the credits that under**
8 **IC 6-3.1-1-2 are to be applied before the credit provided by this**
9 **chapter.**

10 **Sec. 6. As used in this chapter, "taxpayer" means an individual**
11 **or entity that has any state tax liability.**

12 **Sec. 7. A taxpayer that makes a contribution to a scholarship**
13 **granting organization for use by the scholarship granting**
14 **organization in a school scholarship program is entitled to a credit**
15 **against the taxpayer's state tax liability in the taxable year in**
16 **which the taxpayer makes the contribution.**

17 **Sec. 8. The amount of a taxpayer's credit is equal to fifty percent**
18 **(50%) of the amount of the contribution made to the scholarship**
19 **granting organization for a school scholarship program.**

20 **Sec. 9. A taxpayer is not entitled to a carryover, carryback, or**
21 **refund of an unused credit.**

22 **Sec. 10. If a pass through entity is entitled to a credit under**
23 **section 7 of this chapter but does not have state tax liability against**
24 **which the tax credit may be applied, a shareholder, partner, or**
25 **member of the pass through entity is entitled to a tax credit equal**
26 **to:**

27 **(1) the tax credit determined for the pass through entity for**
28 **the taxable year; multiplied by**

29 **(2) the percentage of the pass through entity's distributive**
30 **income to which the shareholder, partner, or member is**
31 **entitled.**

32 **Sec. 11. To apply a credit against the taxpayer's state tax**
33 **liability, a taxpayer must claim the credit on the taxpayer's annual**
34 **state tax return or returns in the manner prescribed by the**
35 **department. The taxpayer shall submit to the department the**
36 **information that the department determines is necessary for the**
37 **department to determine whether the taxpayer is eligible for the**
38 **credit.**

39 **Sec. 12. A contribution shall be treated as having been made for**
40 **use in a school scholarship program if:**

41 **(1) the contribution is made directly to a scholarship granting**
42 **organization; and**

(2) either:

(A) not later than the date of the contribution the taxpayer designates in writing to the scholarship granting organization that the contribution is to be used only for a school scholarship program; or

(B) the scholarship granting organization provides the taxpayer with written confirmation that the contribution will be dedicated solely for use in a school scholarship program.

Sec. 13. The total amount of tax credits awarded under this chapter may not exceed five million dollars (\$5,000,000) in any state fiscal year.

Sec. 14. The department, on an Internet web site used by the department to provide information to the public, shall provide the following information:

(1) The application for the credit provided in this chapter.

(2) A timeline for receiving the credit provided in this chapter.

(3) The total amount of credits awarded under this chapter during the current calendar year.

Sec. 15. The department shall adopt rules under IC 4-22-2 to implement this chapter.

SECTION 2. IC 20-51 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 51. SCHOOL SCHOLARSHIPS

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Agreement" refers to an agreement between the department of state revenue and an applicant that applies for certification of a school scholarship program.

Sec. 3. "Contribution" refers to a contribution to a scholarship granting organization for use in a school scholarship program.

Sec. 4. (a) "Cost of education" means the tuition and fees that would otherwise be charged by a participating school to:

(1) an eligible student; or

(2) a parent of an eligible student.

(b) In the case of an eligible pupil who attends a public school, the term includes any transfer tuition charged to the eligible student or a parent of the eligible student.

Sec. 5. "Eligible student" refers to an individual who:

(1) has legal settlement in Indiana;

(2) is at least five (5) years of age and less than twenty-two (22) years of age on the date in the school year specified in IC 20-33-2-7;

(3) either has been or is currently enrolled in a participating school;

(4) either:

(A) is a member of a household with an annual income of not more than two hundred percent (200%) of the amount required for the individual to qualify for the federal free or reduced price lunch program; or

(B) received a scholarship under this article in the immediately preceding school year or the immediately preceding term of the current school year and qualified under clause (A) in the first year that the individual received a scholarship under this article; and

(5) meets at least one (1) of the following conditions:

(A) The individual is enrolling in kindergarten.

(B) The individual was enrolled in a public school during the school year preceding the first school year for which a scholarship granting organization provides a scholarship to the individual.

(C) The individual received a scholarship from the Educational CHOICE Charitable Trust for the 2008-2009 school year.

(D) The individual received a school scholarship for the previous school year.

Sec. 6. (a) "Participating school" refers to a public or nonpublic school that:

(1) an eligible student is required to pay tuition or transfer tuition to attend;

(2) voluntarily agrees to enroll an eligible student;

(3) is accredited by either the state board or a national or regional accreditation agency that is recognized by the state board; and

(4) administers the tests under the Indiana statewide testing for educational progress (ISTEP) program or administers another nationally recognized and norm-referenced assessment of the school's students.

(b) The term does not include a public school in a school corporation where the eligible student has legal settlement under IC 20-26-11.

Sec. 7. "Scholarship granting organization" refers to an

organization that:

- (1) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and
- (2) is organized at least in part to grant school scholarships.

Sec. 8. "School scholarship" refers to a grant to pay only the cost of education for an eligible student as determined for the school year (as defined in IC 20-18-2-17) for which the scholarship will be granted.

Chapter 2. Exchange of Information; Rules

Sec. 1. The department of state revenue shall maintain a publicly available list of the school scholarship programs certified by the department of state revenue. The list must contain names, addresses, and any other information that the department of state revenue determines is necessary for the public to determine which scholarship granting organizations conduct school scholarship programs. A current list must be posted on an Internet web site used by the department of state revenue to provide information to the public.

Chapter 3. Scholarship Granting Organizations; Certification; Administration of Contributions

Sec. 1. (a) A program qualifies for certification as a school scholarship program if:

(1) the program:

(A) is administered by a scholarship granting organization; and

(B) has the primary purpose of providing school scholarships to eligible students; and

(2) the scholarship granting organization administering the program:

(A) applies to the department of state revenue on the form and in the manner prescribed by the department of state revenue; and

(B) enters into an agreement with the department of state revenue to comply with this article.

(b) A program may not be certified as a school scholarship program if the program:

(1) limits a recipient of a school scholarship to attending specific participating schools; or

(2) limits the ability of a recipient of a school scholarship to change attendance from one (1) participating school to another participating school.

Sec. 2. The department of state revenue shall certify all

1 programs that meet the qualifications under section 1 of this
 2 chapter as school scholarship programs.

3 **Sec. 3.** An agreement entered into under section 1 of this chapter
 4 between the department of state revenue and a scholarship
 5 granting organization must require the scholarship granting
 6 organization to do the following:

7 (1) Provide a receipt to taxpayers for contributions made to
 8 the scholarship granting organization that will be used in a
 9 school scholarship program. The department of state revenue
 10 shall prescribe a standardized form for the receipt issued
 11 under this subdivision. The receipt must indicate the value of
 12 the contribution and portion of the contribution being
 13 designated for use in a school scholarship program.

14 (2) Distribute at least ninety percent (90%) of the total
 15 amount of contributions as school scholarships to eligible
 16 students.

17 (3) Distribute one hundred percent (100%) of any income
 18 earned on contributions as school scholarships to eligible
 19 students.

20 (4) Conduct criminal background checks on all the
 21 scholarship granting organization's employees and board
 22 members and exclude from employment or governance any
 23 individual who might reasonably pose a risk to the
 24 appropriate use of contributed funds.

25 (5) Make the reports required by this chapter.

26 **Sec. 4.** An agreement entered into under section 1 of this chapter
 27 may not prohibit a scholarship granting organization from
 28 receiving contributions other than contributions described in
 29 section 3(1) of this chapter.

30 **Sec. 5.** An agreement entered into under section 1 of this chapter
 31 must prohibit a scholarship granting organization from
 32 distributing school scholarships for use by an eligible student to:

33 (1) enroll in a school that has:

34 (A) paid staff or board members; or

35 (B) relatives of paid staff or board members;

36 in common with the scholarship granting support
 37 organization;

38 (2) enroll in a school that the scholarship granting
 39 organization knows does not qualify as a participating school;
 40 or

41 (3) pay for the cost of education for a public school where the
 42 eligible student is entitled to enroll without the payment of

1 tuition.

2 **Sec. 6. (a) A scholarship granting organization certified under**
 3 **this chapter must publicly report to the department of state**
 4 **revenue by August 1 of each year the following information**
 5 **regarding the organization's scholarships awarded in the previous**
 6 **school year:**

7 (1) The name and address of the scholarship granting
 8 organization.

9 (2) The total number and total dollar amount of contributions
 10 received during the previous school year.

11 (3) The:

12 (A) total number and total dollar amount of scholarships
 13 awarded during the previous school year; and

14 (B) total number and total dollar amount of school
 15 scholarships awarded during the previous school year.

16 The report must be certified under penalties of perjury by the chief
 17 executive officer of the scholarship granting organization.

18 (b) A scholarship granting organization certified under this
 19 chapter shall contract with an independent certified public
 20 accountant for an annual financial audit of the scholarship
 21 granting organization. The scholarship granting organization must
 22 provide a copy of the annual financial audit to the department and
 23 must make the annual financial audit available to a member of the
 24 public upon request.

25 **Sec. 7. The department of state revenue shall prescribe a**
 26 **standardized form for scholarship granting organizations to report**
 27 **information required under this chapter.**

28 **Sec. 8. The department of state revenue may, in a proceeding**
 29 **under IC 4-21.5, suspend or terminate the certification of an**
 30 **organization as a scholarship granting organization if the**
 31 **department of state revenue establishes that the scholarship**
 32 **granting organization has intentionally and substantially failed to**
 33 **comply with the requirements of this article or an agreement**
 34 **entered into under this article.**

35 **Sec. 9. If the department of state revenue suspends or**
 36 **terminates the certification of an organization as a scholarship**
 37 **granting organization, the department of state revenue shall notify**
 38 **affected eligible students and their parents of the decision as**
 39 **quickly as possible. An eligible student affected by a suspension or**
 40 **termination of a scholarship granting organization's certification**
 41 **shall remain an eligible student under this article until the end of**
 42 **the school year after the school year in which the scholarship**

1 granting organization's certification is suspended or terminated,
 2 regardless of whether the scholarship student currently meets the
 3 definition of an eligible student.

4 **Sec. 10.** The department of state revenue may conduct either a
 5 financial review or an audit of a scholarship granting organization
 6 certified under this chapter if the department of state revenue has
 7 evidence of fraud.

8 **Sec. 11.** The department of state revenue shall adopt rules under
 9 IC 4-22-2 to implement this article.

10 SECTION 3. [EFFECTIVE UPON PASSAGE] The department of
 11 state revenue may adopt temporary rules in the manner provided
 12 in IC 4-22-2-37.1 for the adoption of emergency rules to implement
 13 IC 20-51, as added by this act. A temporary rule adopted under
 14 this SECTION expires on the earliest of the following:

15 (1) The date another temporary rule is adopted under this
 16 SECTION that supersedes or repeals the previously adopted
 17 temporary rule.

18 (2) The date that a permanent rule adopted under IC 4-22-2
 19 supersedes or repeals a temporary rule adopted under this
 20 SECTION.

21 (3) The date specified in the temporary rule.

22 (4) June 30, 2011.

23 SECTION 4. [EFFECTIVE UPON PASSAGE] IC 6-3.1-30.5, as
 24 added by this act, applies to contributions made in taxable years
 25 beginning after December 31, 2009.".

26 Delete pages 2 through 7.

27 Page 8, delete line 1.

28 Renumber all SECTIONS consecutively.

(Reference is to SB 528 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 8, Nays 3.

Senator Hershman, Chairperson